



**BEDFORD
PHARMACY**
Incorporated in 1982

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"The Prescription Compounding Specialists"

N.H. Insurance Department
21 South Fruit Street, Concord, NH 03301,
Att. Jenny Patterson

10/28/2016

Usual and Customary price in retail pharmacy is and always has been the price the pharmacy assigns to a prescription drug. This is the price paid by a cash customer. Under NH law [RSA 318:47-h [1] Pharmacy Benefit Managers are to require a contracted pharmacy to charge a patient the pharmacy's Usual and Customer price or the co-pay, whichever is less.

Legislation passed in 2016 gave rule making authority to the Board of Pharmacy to accept complaints from pharmacies regarding violations of this statute. The language of RSA 318:47-h was also added to various insurance statutes, for the purpose of giving the Department of Insurance enforcement authority to enforce violations of the statute. While the legislation [HB 1210] grants rule making authority to the DOI to implement the provisions of the statute, that authority is limited as outlined in the statute. [The commissioner shall adopt rules under RSA 541-A to implement this paragraph. Such rules shall include procedures for addressing complaints, provisions for enforcement, the receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for reporting to the board of pharmacy on the status of complaints referred.]

The proposed INS 2704, among other things, seeks to create a new definition of Usual and Customary charge goes beyond the scope of the rule making authority included in HB 1210. In addition the substance of the proposed definition changes the definition of Usual and Customary price from what is and has been accepted industry practice nationwide including the definition recognized by the federal government.

HB 1210 was passed to address the concern of retail pharmacy that the current law regarding the price for filling a prescription was not being followed by PBM's and there was no ability for pharmacy to seek redress. The proposed definition of U&C in the rule does not accomplish this purpose and in fact changes the law without Legislative approval.

A brief history of the relationship between PBM's and retail pharmacy may help understand how we got to where we are. It all started over 30 years ago when the PBM industry told pharmacies 'since we are sending you business we are going to take a discount from your usual and customary (U&C) pricing'. At the time it seemed reasonable but has since proved to be one of the most fatal blows to any health care provider. Since that time the PBMs have all but eliminated our dispensing fee and decreased the reimbursement of drugs by manipulating, lowering, and utilizing deceitful MAC pricing.

There is a cost to running any business. In the pharmacy world we could simply enough add the following figures: Rx Bottle, \$0.50, Rx label \$0.12, fee to process a claim to the PBM \$0.08 to \$0.36. to that roughly \$0.75 total add in Pharmacists salary, technician salary, heat/AC, lights, insurance, cost of maintaining expensive inventory, etc..

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Now sell #30 amoxicillin to your loyal customer and receive \$1.68 from the PBM or sell #30 Sertraline 100 mg for \$1.97 that cost \$4.20. Do the math, how long can we stay in business? The losses incurred with third party prescriptions is being shouldered by the few cash paying customers that remain. PBMs need to be fair. While forcing our customers to their mail order pharmacies they are cutting community pharmacies off at the knees. They pay themselves at a different rate than they pay us.

Not that long ago, customers paid the pharmacy's U&C or the plan's copay whichever was less. Now the patient pays the price calculated by the PBM as if the PBM was paying a portion of the claim and they are not paying anything. Somehow the PBM changed their software to have the patient pay at their calculated price. It cannot be lot of work to revert to the original calculation of pharmacy U&C and copay as determined by the plan.

The NH Insurance Department should not adopt the proposed U&C definition.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald L. Petrin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ronald L. Petrin, Pharmacist

Bedford Pharmacy, Inc.